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341), "A few cases may be found holding that the interpretation of the devise must depend upon the *lex situs*. But here too the weight of reason and authority is in favor of the rule that the interpretation of the devise is to be governed by the law or usage with which the testator is supposed to be most familiar, namely that of his domicil. Story, (Conflict of Laws, 8 ed. 671) also says the law of the domicil applies.

It is stated in the chapter on Legitimacy and Adoption (p. 88) that "the law of the state where the infant is domiciled determines validity of legitimacy or adoption." This is not a correct statement of the law. It is generally agreed that legitimacy is determined not by the infant's domicil but by the domicil of the father. The principle on which the author states that the domicil of an infant determines the validity (sic.) of legitimacy is that the domicil of an infant is that of his father (p. 89). But, of course, this is not true of illegitimate children.

A grave fault in the book is the idea it conveys to the uninitiated student for whom it is apparently intended, that the law of Conflict of Laws is simple, clear and well settled, whereas no topic of the law is more subtle, complicated and subject to difference of opinion.

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INSANITY AND MENTAL DEFICIENCY IN RELATION TO LEGAL RESPONSIBILITY. By William G. H. Cook, LL. D. (Lond.) With a foreword by Sir John Macdonell, K. C. B., M. A., LL. D., F. B. A., and a preface by Sir Robert Armstrong-Jones, M. D., F. R. C. P., D. Sc., C. B. E., J. P., D. L., F. S. A. London: George Routledge & Sons, Limited. New York: E. P. Dutton & Co., 1921, pp. xxiv, 192.

The object and scope of this book, which is a thesis approved for the degree of Doctor of Laws in the University of London, are indicated by the title. As the author points out in his introduction, the problems of insanity and mental deficiency have been generally considered in their relation to the criminal law. There is consequently room for such a book as this purports to be. Although the greater portion of the text is devoted to a discussion of the English cases, the author makes frequent references to the law of other countries as well as the British colonies.

In Chapter I the various forms of mental disorder and defect are defined and classified. In Chapter II responsibility for tort is discussed, the *dictum* of Lord Esher in *Hanbury v. Hanbury* (8 T. L. R. 559 C. A.) that responsibility exists "provided the disease of the mind of the person doing the act be not so great as to make him unable to understand the nature and consequence of the act which he was doing" being accepted as a correct statement of the English law. Chapter III deals with capacity to contract. The author recognizes the decision of the Court of Appeal in *The Imperial Loan Company, Limited, v. Stone* (1892, 1 Q. B. D. 599), which permits insanity to be set up as a defense to an action for breach of contract only

where this was known to the plaintiff at the time of contracting, as representing the present law of England, but considers the result unsound and unsatisfactory. In his opinion the law should be as follows:

"The alleged contract is void, but, with the object of preventing the lunatic from benefiting from his acts, the lunatic or his estate shall be required to make restitution to the other party where:—

"(i) The lunatic has derived benefit as a result of his act, and

"(ii) Where the other party has suffered loss as a result of the act of the lunatic" (p. 90).

Chapters IV, V, VI and VII are devoted respectively to mental deficiency and marriage, supervening insanity and divorce, testamentary capacity in mental deficiency, and evidence of insanity. In an appendix the powers and duties of the English authorities concerned in the administration of the law regarding insanity and mental deficiency are summarized, and suggestions for the reform of such administration are presented.

This book, viewed as a whole, indicates wide research and careful study by the author. The scope of his investigation is really remarkable, embracing, as it does, in places, the laws of most civilized countries. In the chapter on Insanity and Divorce, for instance, he sets forth the laws of twenty-seven countries in addition to those of the British Dominions and the United States.

The author's treatment of the subject is generally original, and most of the text shows careful study. In the chapter on testamentary capacity, however, nearly one-half of the text (10½ out of 24 pages) was taken from the opinion of the court in *Banks v. Goodfellow* (L. R. 5 Q. B. 549). With the exception of two pages, this text appears without quotation marks. Some portions of the unquoted text are paraphrased, while others appear without verbal change. On page 149 the author presents as his own a discussion of American cases, which is to be found in the opinion of the court in *Banks v. Goodfellow* (*supra*).

A number of inconsistencies and inaccuracies were noted. In the first place the author frequently confuses mental unsoundness or insanity and mental deficiency or feeble-mindedness, although recognizing their fundamental difference in the title of his book. On page 3 he treats feeble-mindedness as synonymous with unsoundness of mind and then proceeds to divide this mental state into two classes, (1) "where there is absence or weakness of mind" and (2) "where the mind which once was normal has subsequently become deranged." On page 16 he treats feeble-mindedness as a form of mental unsoundness, and on page 17 confuses mental deficiency and lunacy. Chapter III is entitled "Mental Deficiency and the Law of Contract," while three of the subheadings relate to "insanity."

There appears to be an inconsistency between two of the author's statements relative to the English law of testamentary capacity. In one place (p. 132) he states the following: "The law is not satisfied to apply the layman's test of whether or not the testator is very different from other men, but it applies the general test. Was the testator, at the time of making the will, labouring under delusion?" Later he says: "From an examination of the

English Law Reports there appears to be no doubt that an ordinary lunatic, *i. e.*, one who is deficient in his general faculties, does not possess testamentary capacity." (p. 141.) The second statement is broader than the first, as delusion is but a single symptom of mental disease.

A surprising error occurs in a reference to Blackstone's Commentaries. On page 57 the author states the following: "Sir William Blackstone's view of the liability of lunatics for their torts was that inasmuch as a wrong is the effect of a 'vicious will' (by which Austin says, he means 'unlawful intention or culpable negligence') infants and madmen are exempted because the act goes not with their will," citing IV Comm. 20-24. One need not be very familiar with Blackstone to know that "vicious will" is his test of responsibility for *crimes* not *torts*. On page 21 of Volume IV he says: "So that, to constitute a crime against human laws, there must be, first, a vicious will"; and on page 24 he states: "The second case of a deficiency in will, which excuses from the guilt of crimes, arises from a defective or vitiated understanding, *viz.*, in an *idiot* or *lunatic*."

In his chapter on Torts the author states: "While the American authorities are agreed that persons *non compos* (as well as children without discretion) are not responsible for their torts where intention is a necessary element of liability, they state that infants and lunatics, without regard to their degree of incapacity, are liable, in a civil action, for the damage caused by such torts of theirs as would in sane adults amount to a tort of either wilful wrong or culpable negligence" (p. 58). Referring to this statement he says on the same page "there is no authority for it apart from the case of Williams v. Hays" (143 N. Y. 442; 42 Am. St. Rep. 743). Both these statements are incorrect. The doctrine that an insane person is liable for his torts prevails generally in this country. While some courts state that liability is confined to torts not involving intention (Jewell v. Colby, 66 N. H. 399; Feld v. Borodofski, 87 Miss. 727; C. & O. Ry. Co. v. Francisco, 149 Ky. 307); others lay down the rule that an insane person is liable for any tort (McIntyre v. Sholty, 121 Ill. 660; Cross v. Kent, 32 Md. 581; Morse v. Crawford, 17 Vt. 499).

In concluding that the present law of England as to the capacity of an insane person is unqualifiedly represented by the rule of The Imperial Loan Co. v. Stone (*supra*) which declares that "insane persons are to be bound by their contracts unless the other parties to such contracts knew or had reason to believe that the lunacy existed" (p. 82) the author overlooked the later case of Baldwyn v. Smith (L. R. 1900, 1 Ch. Div. 588) in which the Chancery Division said the contract of an insane person is *voidable*.

While discussing the capacity of an insane person to contract the author states "the American authorities sustain the principle that lunacy nullifies a contract and that insanity may be either specially pleaded or given in evidence under the general issue" (p. 73) citing Mitchell v. Kingham, (5 Pick. 431) and Grant v. Thompson, (4 Conn. 203). This is a misleading, if not inaccurate, statement of the American law. While it is true that insanity may in certain cases be set up as a defense to an action on a contract, the in-

sanity does not "nullify" the contract, which according to the general view is merely voidable. (Williston on Contracts, Sec. 251 and cases cited.)

Although the author speaks with assurance regarding the American law on the various topics discussed by him he cites but twelve cases, four of which were gleaned from the opinion of the court in *Banks v. Goodfellow*, as already pointed out. Eight of these twelve cases were decided before 1850. *Brigham v. Fayerweather* (144 Mass. 48), decided in 1887, is referred to as a "recent" case (p. 69).

It is to be regretted that the author permitted the wide scope of his investigation to interfere with the thoroughness of his research.

Edwin R. Keedy.

LE GOUVERNEMENT DES JUGES ET LA LUTTE CONTRE LA LÉGISLATION SOCIALE AUX ÉTATS-UNIS.—L'Expérience Américaine Du Contrôle Judiciaire De La Constitutionnalité Des Lois. Par Edouard Lambert. Professor à L' Université de Lyon. Marcel Giard & Cie., Paris, 1921, pp. 276.

This book was issued as an earnest of the work inaugurated last Fall at the University of Lyons when the *Institut de Droit Comparé* opened in consequence of being finally authorized by the Department of Public Instruction as an adjunct of the *Faculté des Lettres*. The author has been a law professor of the University for the past twenty-five years and has long been specially interested in comparative legislation as taught in the University of Paris and steadily encouraged by the *Société de Législation Comparée*, founded in 1869. Although this society in 1873 was decreed to be an organ of public utility and under the resulting governmental patronage has done such important work in the collection and translation of foreign laws as to attract a world-wide membership, its scope has been confined to the purely continental standpoint of specific legislation and commentaries thereon. Professor Lambert long ago recognized that true comparative study should embrace not only *legislation* but *law generally* so that the great body of Anglo-American common law and jurisprudence might be included. He has also constantly urged the importance of comparative legal history covering every form of law. This new departure at the University of Lyons is largely the result of his individual persistent and energetic efforts with the French Government covering several years. Among his former works are: *Fonction du droit civil comparé*; *La Tradition romaine sur la succession des formes du testament devant l'histoire comparative*; *Le Problème de l'origine des XII tables*; *L'enseignement du droit comparé — sa coopération au rapprochement entre la jurisprudence française et la jurisprudence anglo-américaine*. There can be no doubt about his sincere devotion to the subject nor can one believe that he has not been a diligent student. His breadth of conception is revealed in his insisting upon the title of *law* rather than *legislation* for the newly created *Institut*. It is further shown in the titles of his lecture courses: *Introduction à l'étude du droit*; *Histoire comparative du droit* *Science pénitentiaire*; *Jurisprudence comparative*; *Droit con-*